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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIMYA F. E. SIMON,

Plaintiff - Appellant,

v.

JOHN L. AUSTIN, III; et al.,

Defendants - Appellees.

No. 07-35184

D.C. No. CV-06-05695-RBL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted December 17, 2008^{**}

Before: WALLACE, TROTT and RYMER, Circuit Judges.

Kimya F. E. Simon, a former Washington state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action challenging his loss of good-time credits on the ground that it was barred by *Heck v.*

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Humphrey, 512 U.S. 477 (1994). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, and we affirm.

The district court properly dismissed the action because a judgment in Simon’s favor would necessarily imply the invalidity of the Indeterminate Sentencing Review Board’s (“ISRB”) decision to deny Simon good-time credits. Simon, who is out of custody, cannot seek to overturn the ISRB’s decision in a habeas proceeding and he has failed to show that any exceptions to the *Heck*-bar apply. *See Heck*, 512 U.S. at 486-87; *Guerrero v. Gates*, 442 F.3d 697, 704 (9th Cir. 2006) (“The fact that [plaintiff] is no longer in custody and thus cannot overturn his prior convictions by means of habeas corpus does not lift *Heck*’s bar.”); *see also Franklin v. State of Oregon, State Welfare Div.*, 662 F.2d 1337, 1343 (9th Cir. 1981) (sua sponte dismissal prior to issuance of a summons is proper where claims are “wholly insubstantial”).

AFFIRMED.